Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

JUN 11 1996

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996:	)	CC Docket No. 96-115
	)	
Telecommunications Carriers' Use	)	
of Customer Proprietary Network	)	
Information and Other	)	
Customer Information	)	

COMMENTS OF CONSUMER FEDERATION OF AMERICA

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June 11, 1996

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SUMMARY

CFA believes in a simple principle with respect to privacy issues. That is, keep control of information about consumers in the hands of consumers. If the CPNI rules follow this most basic principle, the Commission will have struck a responsible balance between competitive fairness and consumer protection. The rules outlined at §222 of Telecommunications Act of 1996 ("the 1996 Act") expressly limit the uses of information gathered by virtue of the monopoly relationship with a consumer.

Through the discussion of appropriate policies for identifiable and aggregate information, the Commission implicitly recognizes that Congress struck a balance between the two types of information and the appropriate rules.

We believe the inclusion of §222 in the 1996 Act indicates Congress believed that the current rules at both the federal and state levels are inadequate to protect consumers and to prevent anti-competitive uses of this information. Therefore, any steps the Commission takes must be toward strengthening consumer protections.

We would require affirmative, written consent from consumers before any identifiable information gathered about them could be used by any company, including the incumbent local exchange carrier. This option both protects against anti-competitive abuses and maximizes protection for the captive customer. Such a regime also makes monitoring of CPNI use much more manageable and reliable. Such a requirement for personally identifiable CPNI would best effectuate Congressional intent

Setting strong federal standards while permitting states to exceed the federal floor is the best way to strike a balance between the 1996 Act's mandate to the Commission of effective consumer and competitive protections for CPNI and the role of state regulators. State regulators are in the best position to establish rules to deal with particular problems that consumers in a state may be facing.

With respect to questions of personally identifiable information and privacy, CFA believes the legislation is quite clear. If a company obtains information by virtue of the fact that they sell a service to a consumer, that information should not be used for any other purpose other than billing and providing that service. CFA believes the tight protections against misuse of personally identifiable information would best be counter-balanced by a policy of wide availability of aggregate information.

CFA strongly opposes a policy which would permit a carrier to use outbound telemarketing programs to obtain oral approval from customers. Such a policy would seriously undermine the goals of §222 It would be virtually impossible to police such activity.

CFA strongly opposes permitting oral approval for use of personally identifiable CPNI and we believe it is contrary to Congressional intent. For written authorizations, consumers should be made aware that they can limit the use of this personal information.

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I. INTRODUCTION

Consumer Federation of America ("CFA")[1] believes that as the telecommunications superhighway develops and expands, privacy issues are likely to become one of the most important consumer issues of the information age. As more and more uses are made of the network, more sensitive, personal information about consumers will be flowing across it. The customer proprietary network information ("CPNI") rules that the Federal Communications Commission ("Commission") establishes should be designed to provide as much protection as possible to American consumers.

CFA believes in a simple principle with respect to privacy issues. That is, keep control of information about consumers in the hands of consumers. If the CPNI rules follow this most basic principle, the Commission will have struck a responsible balance between competitive

[1]The Consumer Federation of America is a non-profit association of some 240 pro-consumer groups, with a combined membership of 50 million, that was founded in 1968 to advance the consumer interest through advocacy and education.

fairness and consumer protection. The rules outlined at §222 of Telecommunications Act of 1996[2] ("the 1996 Act") expressly limit the uses of information gathered by virtue of the monopoly relationship with a consumer.

The Commission explicitly recognizes at para. 15 of the Notice of Proposed Rulemaking ("Notice")[3] that the goals of §222 are protecting consumers' privacy and preventing anti-competitive uses of information gathered by companies by virtue of their monopoly relationship with the consumer. Through the discussion of appropriate policies for identifiable and aggregate information, the Commission implicitly recognizes that Congress struck a balance between the two types of information and the appropriate rules.

II. ROLE OF THE COMMISSION IN PROTECTING INFORMATION

We believe the inclusion of §222 in the 1996 Act indicates Congress believed that the current rules at both the federal and state levels are inadequate to protect consumers and to prevent anti-competitive uses of this information. Therefore, any steps the Commission takes must be toward strengthening consumer protections

The Notice, at para. 17, raises the question of the scope of its authority and the authority

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[2]Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. §§ 151 et. seq.

[3]In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115

of the states. CFA believes the Commission should set federal minimum standards for consumer privacy protection for CPNI. It will be difficult, if not impossible, for the Commission to monitor the gathering and use of this information without federal standards in place. Indeed, with the goal of permitting all companies into each others businesses firmly established in the legislation, the traditional jurisdictional lines could be used to gain an unfair competitive advantage or take advantage of consumers.

Setting strong federal standards while permitting states to exceed the federal floor is the best way to strike a balance between the 1996 Act's mandate to the Commission of effective consumer and competitive protections for CPNI and the role of state regulators. State regulators are in the best position to establish rules to deal with particular problems that consumers in a state may be facing. The Commission should preserve an appropriate role for state regulators with respect to telecommunications carriers operating in their state.

III. USE OF CPNI BY CARRIERS

In exchange for permitting companies into businesses that they have been prevented from entering, the 1996 Act seeks to eliminate the monopoly benefits enjoyed by local exchange carriers. CPNI can be viewed as another of those monopoly benefits. CFA believes Congress recognized the problems which could arise from being forced to balance the interests of consumers to privacy and the interest of competitors to gain access to what is very sensitive and valuable information.

In effect, Congress narrowed the need for the Commission to struggle with striking the right balance between privacy and competitive concerns. By recognizing different classes of information and the need for different rules. Congress has already taken steps toward creating a reasonable balance.

A. Personally Identifiable Information

With respect to questions of personally identifiable information and privacy, CFA believes the legislation is quite clear. If a company obtains information by virtue of the fact that they sell a service to a consumer, that information should not be used for any other purpose other than billing and providing that service.[4]

The services outlined at para. 22 of the Notice may be too broad to be used as a starting point for purposes of limiting use of identifiable CPNI in a competitive market. Certainly, these traditional categories of service represent the minimum standards necessary to guard against LEC's using their control of the local market to prevent effective access by new entrants.[5] Once

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[4]§222(c)(1) "Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories."

[5]Since most LEC's have traditionally provided billing and collection services for the long distance companies, the dangers of using long distance CPNI in an anti-competitive fashion are smaller.

the local markets are opened to competition, the limits on use of CPNI should evolve to encompass more discrete services within the broad categories outlined by the Commission.

In theory, for purposes of protecting against anti-competitive uses of this information, the Commission has two options. First, it could make the information gathered by the incumbent monopolist available to all companies on equal terms and conditions. This may help protect against anti-competitive behavior, but does absolutely nothing to protect the captive ratepayer and is, therefore, contrary to the 1996 Act.[6]

The second, more attractive option is CFA's response to para. 27 of the Notice. We would require affirmative, written consent from consumers before any identifiable information gathered about them could be used by any company, including the incumbent local exchange carrier. This option both protects against anti-competitive abuses and maximizes protection for the captive customer. Such a regime also makes monitoring of CPNI use much more manageable and reliable. Such a requirement for personally identifiable CPNI would best effectuate Congressional intent.

We note that Congress mentions the requirement of affirmative written consent in the context of the mandate of confidentiality with respect to CPNI at §222(c). We believe this section indicates that affirmative written consent should be the standard for disclosure of CPNI

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[6]§222(a) "Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to,...customers..."

to any party, including the carrier that collects it. This reading of the Act is supported by the conference report which indicates in the general discussion of subsection (c) that access to such information is at the discretion of the customer. What applies to a LEC competitor's access to CPNI should apply to the LEC and its subsidiaries or affiliates as well.[7]

B. Aggregate Information

The rules for use of aggregate information should be designed to maximize disclosure of such data. CFA supports the suggestion at the end of para. 37 of the Notice that disclosure of the availability of aggregate information should be as broad as possible. CFA believes the tight protections against misuse of personally identifiable information would best be counter-balanced by the wide availability of aggregate information.

IV. NOTIFICATION AND AUTHORIZATION

CFA supports the tentative conclusion at para. 28 of the Notice regarding notification of the right as a necessary precursor to waiving that right. As indicated above, to maximize consumer protection without any anti-competitive impact, written authorization should be required before a carrier can use personally identifiable CPNI. Consumers should be informed of their rights in writing when they contract for a service and annually thereafter. Furthermore,

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[7]Even if the Commission believes the Act is unclear on whether affirmative written consent is required, it remains in the interest of consumers that such a requirement apply to personally identifiable information.

consumers should be reminded of their rights at the time of sale of a new service.

A. No Outbound Telemarketing to Obtain Approval for Use of CPNI

CFA strongly opposes a policy which would permit a carrier to use outbound telemarketing programs to obtain oral approval from customers. (Notice at para. 30) Such a policy would seriously undermine the goals of §222 One of the arguments in favor of permitting inbound telemarketing is that the consumer has initiated the transaction. While CFA maintains that inbound telemarketing can have serious anti-competitive consequences, permitting outbound marketing designed to obtain approval to use CPNI would effectively eviscerate the consumer protection elements of this section of the 1996 Act.

It would be virtually impossible to police such activity. Furthermore, even if an abuse is uncovered, much of the damage to the consumer's privacy and competition will have already been done. Such a policy has no real upside from the point of view of the customer. From the perspective of the companies there is a split. There is plenty of benefit for the incumbent LEC while the prospects for the new entrant are decidedly mixed. To maintain the principle of consumer control over information about them, the Commission should not permit outbound marketing designed to obtain oral waivers of privacy

B. Terms and Conditions of Authorized Use of CPNI

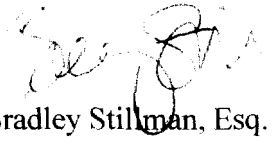
In para. 33 of the Notice, the Commission raises a number of important issues which go to the question of consumer control over their CPNI. While CFA strongly opposes permitting oral approval for use of personally identifiable CPNI and we believe it is contrary to Congressional intent, if the Commission chooses to endorse such a policy in any context, it must be extremely limited in scope. Whenever oral authorization is permitted and obtained by a carrier, such authorization should only apply for that one transaction and the single service involved.

For written authorizations, consumers should be made aware that they can limit the use of this personal information as much as they wish. The authorization form should include a time period during which it remains valid. In the event that a consumer has failed to indicate a time period, the carrier must presume it is valid only for the single transaction at issue. Consumers should be permitted to limit the type of information which can be used by a carrier, the time period and the purposes for which it can be used. With this information contained in databases, such a policy should present little hardship to the companies involved. Furthermore, any "hardship" is clearly outweighed by the important consumer protection goals.

V. CONCLUSION

Wherefore, CFA urges the Commission to follow Congressional intent by protecting consumer privacy through a strict prohibition on the use of personally identifiable information without the affirmative written consent of the consumer and to encourage maximum competition by providing for broad distribution of aggregate information.

Respectfully submitted,



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